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Reply to Philadelphia Office

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PA 19103-2029 (3AP21)

David L. Arnold, Chief  
Ozone & Mobile Sources Branch (3AP21)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: Comments on Philadelphia One-Hour Attainment Demonstration

Dear Mr. Arnold:

Citizens for Pennsylvania's Future (PennFuture) is a statewide environmental organization that represents its members and other groups in environmental litigation and advocacy and promotes the use of renewable energy. By this letter, PennFuture submits its comments on the one-hour attainment demonstration for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (or "Philadelphia attainment demonstration"). For the following reasons, PennFuture urges EPA to disapprove the Philadelphia attainment demonstration.

1. Attainment Not Demonstrated

It is axiomatic that EPA must not approve an attainment demonstration that does not demonstrate attainment. However, this is precisely what EPA proposes to do. EPA's proposed rule states that the Philadelphia area will need additional emission reductions of 0.3 percent for NOx and 4.5 percent for volatile organic compounds (VOCs) to attain the ozone standard. The accompanying technical support document (TSD) notes that the Philadelphia area will need additional emission reductions of 3.4 tons per day of NOx and 62 tons per day of VOCs for attainment. EPA's analysis should stop at this point: Pennsylvania's program does not demonstrate attainment and should be disapproved.

Instead, EPA notes that Pennsylvania "has submitted an enforceable commitment to adopt whatever rules are necessary to attain" the one-hour ozone standard (64 Fed.Reg. 70439). This vague promise of future emission control programs is far from a guarantee of air quality improvements, and cannot support an approval of the Philadelphia attainment demonstration.

## 2. "Weight of the Evidence" Not Valid

When an attainment demonstration falls short of demonstrating attainment, EPA should require a state to adopt and submit better air programs that will reduce emissions and improve air quality. Instead, EPA's proposal engages in a creative exercise known as "weight of the evidence", a series of adjustments purporting to show that Pennsylvania's failing program should nevertheless be approved. An attainment demonstration that only passes muster when assisted by the "weight of the evidence" approach does not satisfy the requirement that state plans "provide for attainment" under Sections 172(c) and 182(c)(2)(A) of the Clean Air Act. The Philadelphia attainment demonstrations, which do not show attainment without the gymnastics of the "weight of the evidence" approach, should therefore be disapproved.

## 3. Programs Not Yet Approved by EPA

The proposed EPA approval of the Philadelphia attainment demonstration is based on emissions reductions from many clean air programs. However, several of these programs are not yet fully approved by EPA and should not form the basis of an attainment demonstration.

For example, EPA has only conditionally approved the requirement to apply reasonably available control technology, or RACT, to reduce emissions of NO<sub>x</sub> and VOCs. To convert this conditional approval to a final approval, Pennsylvania must submit and EPA must approve case-by-case determinations that emissions reductions method at particular sources constitute RACT. EPA has not completed its review of Pennsylvania's submissions. Therefore, EPA should not credit the claimed emission reduction from this program in approving the Philadelphia attainment demonstration until EPA completes its review and approval of all underlying emission sources.

Additionally, EPA credits a purported increase in "rule effectiveness" by Pennsylvania from 80% to 90%. EPA explains in the TSD that rule effectiveness "is a means of enhancing compliance or implementation by industrial sources" and states that rule effectiveness "will be discussed in detail" with the post-1999 rate of progress action (p. xiv). (While the TSD claims that EPA proposed approval at 64 Fed.Reg. 46,325, PennFuture is unable to find any description of rule effectiveness in that notice.) Given the past shortcomings with Pennsylvania's air enforcement program—see, for example, the report of EPA's own Inspector General on the subject—EPA should view such promises with skepticism. Further, it is not clear how a rule effectiveness protocol would be enforceable by EPA or by citizens. At most, "rule effectiveness" offers speculative benefits that EPA plans to describe in a future rulemaking—not an approved program with solid emission benefits worthy of a valid attainment demonstration.

In general, EPA requires only that states "adopt and submit" emission control programs in order to count these programs for purposes of a modeled attainment demonstration, not that EPA actually approve the programs. 64 Fed.Reg. 70,432. However, this approach allows states to include in their attainment demonstrations

programs that may contain significant technical or legal flaws that would be identified on EPA review. Requiring approval by EPA first would frontload the process, force states to adopt programs sooner, and accelerate air quality benefits. PennFuture urges EPA to require full approval of state programs as a condition of including the air quality benefits of these programs in an attainment demonstration.

For these reasons, EPA should disapprove the Philadelphia attainment demonstration. If you have any questions regarding these comments, please call me at (215) 569-9693.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles McPhedran', with a stylized, cursive script.

Charles McPhedran  
Senior Attorney